

January 27, 2004

PUBLIC UTILITIES COMMISSION
Underground Facility Damage Prevention
Requirements (Chapter 895)

NOTICE OF RULEMAKING --
REQUEST FOR ADDITIONAL
COMMENT

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

We re-notice this rulemaking for the purpose of obtaining additional comment from interested persons on newly proposed amendments designed to address issues associated with the notification and treatment of abandoned facilities. Written comments are due on March 3, 2004.

II. BACKGROUND

On October 7, 2003, we issued a Notice of Rulemaking (NOR) accompanied by our proposed amendments to Chapter 895, the Underground Facility Damage Prevention Requirements Rule, to accomplish two objectives:

- 1) to conform to changes to the law protecting underground facilities made by P.L. 2001, ch. 577 and P.L. 2003, ch. 373; and
- 2) to improve and clarify the existing rule based on experience to date and discussions with both excavators and operators.¹

One of the proposed amendments, Section 6(F), related to operator notification to excavators of facilities that were abandoned or made inactive on or after March 28, 2002. As a result of comments we received, we have modified Section 6(F) and propose additional amendments to address issues associated with the notification and treatment of abandoned facilities. Consequently, we re-notice this rulemaking for the purpose of obtaining additional comment from interested persons on the newly proposed amendments. Written comments are due on March 3, 2004.

III. DISCUSSION OF AMENDMENTS

We initially proposed to add Section 6(F) to specify how operators should fulfill the notification requirements contained in P.L. 2001, ch. 577, section 7 (now codified as 23 M.R.S.A. § 3360-A (4-D)). As initially proposed, Section 6(F) required operators of underground facilities to notify excavators of abandoned and inactive underground facilities in the area of an excavation by marking those facilities in the same manner as active facilities. We now propose not to require operators to mark the

¹ The changes to be adopted herein are routine technical rules adopted pursuant to 5 M.R.S.A. § 8071.

applicable abandoned or inactive facilities, but instead to advise the excavator that, while abandoned or inactive facilities may exist within the excavation area, the excavator should treat any line it exposes as active until or unless the operator has confirmed that the exposed facility is inactive. We propose changes to our previously proposed amendments to operator requirements to accomplish this, as follows:

- . eliminate reference to abandoned or inactive facilities in "Marking" requirements, Subsection 6(B)(1);

- . modify Subsections (6)(F)(1) and (2) to specify that an operator is required to notify an excavator of the existence of underground facilities in the area of proposed excavation, rather than mark those facilities.

In addition, we propose to add new text as Subsection 6(F)(3) specifying the information that an operator must give when notifying an excavator of the existence of underground facilities in the excavation area, as well as the requirement that the operator visit the site to positively identify whether an exposed, unmarked underground facility is active or inactive. With regard to this section, we invite comment on whether there would be any circumstances when an operator would not need to visit the site to make a positive determination that an unmarked underground facility within the excavation area is inactive or active.

In addition, we propose to modify excavator requirements by adding Subsection 4(C)(4) and by adding text to Subsection 4(D)(1) to require excavators who expose an unmarked underground facility to treat the facility as live, and to contact the operator for confirmation as to whether the exposed facility is active or inactive. We also add text to Subsection 4(C)(2) to make clear that an excavator must employ reasonable precautions to avoid damage to underground facilities when excavating, after they have been exposed, unless the operator of the facilities has made a positive identification that the facilities are inactive and has indicated that there is no need to protect them from damage. In this manner, we hope to avoid putting excavators at risk by setting up a situation where they believe that they have exposed an inactive facility, when, in fact, it is active but unmarked. By requiring the excavator to handle the line as if live until an operator can visit the site and determine with certainty whether the line is active or inactive, the safety of the excavator and the facility will be protected.

We invite comment on these newly proposed amendments.

IV. PROCEDURES FOR THIS RULEMAKING

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. Written comments on the proposed amendments may be filed with the Administrative Director no later than **March 3, 2004**. Please refer to the docket number of this proceeding, Docket No. 2003-672, when submitting comments. No public hearing on this matter is presently scheduled, but one will be held if requested by five interested persons. Persons wishing to request a public hearing on these proposed amendments must notify the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018 (telephone: (207)287-3831), on or before **February 11, 2004**.

In accordance with 5 M.R.S.A. § 8057-A (1), the fiscal impact of the new amendments to the proposed rule is expected to be minimal. The Commission invites all interested persons to comment on the fiscal impact of this rule.

Accordingly, we

O R D E R

1. That the Administrative Director shall notify the following of this Notice of Rulemaking – Request for Additional Comment:

- All utilities operating in Maine, including natural gas pipeline utilities;
- Sewer and cable TV operators to the greatest extent practicable; and
- Excavators operating in Maine, to the greatest extent practicable.

2. That the Administrative Director will send copies of this Notice and the attached Rule to all persons on the service list in this docket;

3. That the Administrative Director will provide this Notice of Rulemaking and attached proposed Rule to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

3. That the Administrative Director send twenty (20) copies of this Notice of Rulemaking and attached proposed Rule to Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0015.

Dated at Augusta, Maine, this 27th day of January, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Diamond
Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.